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PTO/SB/64 (09-06)

Approved for use through 03/31/2007. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

First named inventor: **Stephen T. Carney**

Application No.:

Art Unit: **1614**

Filed: **3/15/2004**

Examiner: **LEITH, PATRICIA A**

Title: **NUTRITIONAL SUPPLEMENTS - ALFALFA SPROUTS POWDER**

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ **750.00** (37 CFR 1.17(m)); Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of **Petition for Revival under 1.137(b)** (identify type of reply):

- ☒ has been filed previously on **8/8/06**
☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

- ☐ has been paid previously on _____
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Stephen T. Carney
Signature

12/8/06
Date

STEPHEN T. CARNEY
Typed or printed name

Registration Number, if applicable

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Address

Enclosures: ☒ Fee Payment☒ Reply☐ Terminal Disclaimer Form☒ Additional sheets containing statements establishing unintentional delay☐ Other: _____**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

12/21/06
Date

JACK J. VUCLTAGGIO JR.
Signature
Typed or printed name of person signing certificate



United States Patent & Trademark Office

Appl. No. : 10/800,608
Applicant : Stephen Truesdale Carney
Filed : March 15, 2004
TC/A.U. : 1655
Examiner : Patricia A. Leith

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

**Petition for Revival of an Application for Patent Abandoned
Unavoidably under 37 CFR 1.137(b)**

Paragraph 4 of Petition: On January 13, 2006, I received an Office Action Summary from our examiner, Patricia A. Leith, which included a non final rejection of certain claims. After several attempts to contact Examiner Leith, my partner, Jack J. Vultaggio, Jr. and I had a telephone conversation with Examiner Leith on or about the second week of February 2006. During this phone conference with Ms. Leith, it was determined that I needed to file an amendment to the application and a supporting affidavit. The affidavit requested was to come from an expert and was concerning "any interaction or reduction in cholesterol due to the inclusion of folic acid" in our clinical trial. I sent numerous emails to Dr. Lawrence Rink, who conducted our clinical trial, but he was out of the country and did not respond until the end of July 2006. On July 28, 2006, the Amendment and the Affidavit were sent to the Examiner Leith via overnight mail, (a copy of said receipt can be produced if deemed necessary). After a determination was made by the PTO that the application was abandoned, I sent a petition to revive pursuant to 1.137(a) which was dismissed. Hence we have filed this petition to revive under 1.137 (b) for your review.

As of that date, Examiner Leith has all the requested information in her possession.

In her Notice of Abandonment she stated that our lack of response was inadvertent. We had every intention of sending the affidavit as soon as Dr. Rink signed it. In fact, in April, 2006, Mr. Vultaggio attempted and thought successfully to send just the Amendment to the PTO via online filing which we later learned was not received by the PTO.

Our filing to revive our application was based on an unintentional act. Our filing was pursuant to CFR 1.137(a) – unavoidable – when, as you advise it should have been C.F.R. 1.137(b) unintentional. These appeared to be the same to a lay person and the fee was much less. I have worked for eight years on this discovery, the last two seeking patent protection, and our company funds our low. I am requesting that you allow my application to be revived and I can proceed with obtaining my patent.